

J1APLOPC

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 MARIAH LOPEZ,

4 Plaintiff,

5 v.

17 CV 03014 (VEC) (OTW)

6 PROJECT RENEWAL, ET AL.,

7 Defendants.

8 -----x

New York, N.Y.
January 10, 2019
10:09 a.m.

10 Before:

11 HON. WANG: ONA T. WANG,

12 Magistrate Judge

13 APPEARANCES

14 MARIAH LOPEZ, PRO SE

16 JACKSON LEWIS PC

Attorneys for Defendant Project Renewal

17 BY: RICHARD IAN GREENBERG

18 NEW YORK CITY LAW DEPARTMENT

Attorneys for Defendant The City of New York

19 BY: THOMAS B. ROBERTS

20 CLIFTON BUDD & DeMARIA, LLP

Attorneys for Defendant QPS Security, Inc.

21 BY: STEPHEN PAUL PISCHL

22 WILLKIE FARR & GALLAGHER, LLP

Attorneys for Defendants WIN, Inc. and Christine Quinn

23 BY: JILL GRANT

CASIE ORELLAMA

J1APLOPC

(In open court)

(Case called)

MS. LOPEZ: Good morning. Mariah Lopez, pro se plaintiff.

MR. ROBERTS: Thomas Roberts, Assistant Corporation Counsel for the municipal defendants.

MR. GREENBERG: Richard Greenberg, Jackson Lewis PC for Project Renewal.

MR. PISCHL: Stephen Pischl, Clifton Budd and DeMaria for defendant Quality Protective Services Security.

MS. GRANT: I'm Jill Grant and this is Casie Orellama from Willkie Farr and Gallagher representing WIN and Christine Quinn.

THE COURT: All right. Please be seated. Good morning.

MS. LOPEZ: Good morning, your Honor.

THE COURT: Okay. You know what, I always forget to do this, but I'm going to do this now. At the end of the proceeding, I always tell the parties to order the transcript and share the costs. In this case, I'm going to tell the defendants, who have appeared to order the transcript, to share the cost and provide a copy to Ms. Lopez after. Okay?

We are here for a status conference. I guess a few things have happened. Ms. Lopez, we are awaiting for Judge Caproni to rule on the report and recommendation that I issued

J1APLOPC

1 shortly after your motion for TRO before the holidays. So
2 that's not before me. However, I believe that the objections
3 date had passed. So if you intend to object, you should reach
4 out to Judge Caproni's chambers, I mean via the pro se office,
5 but, you know, if you need an extension, reach out as soon as
6 possible. Okay?

7 All right. Let's see. I guess we need to -- and I
8 would like to just hear from the defendants procedurally where
9 we are. I guess, from anybody who's representing the WIN and
10 Christine Quinn defendants, I understand there's a motion to
11 dismiss pending; is that right? Can you give me the status on
12 that?

13 MS. GRANT: Yes, your Honor. We moved to dismiss on
14 behalf of WIN and Christine Quinn. October 5th, I think, was
15 the date of our motion. Ms. Lopez did not file opposition
16 papers and, therefore, the motion is just pending before Judge
17 Caproni.

18 THE COURT: Okay. Ms. Lopez, and you don't need to
19 stand up if it's more comfortable. I understand if you're
20 sitting in the back row it's hard to be heard.

21 MS. LOPEZ: Does that apply to me as well, your Honor.

22 THE COURT: Sure. You can stay seated. You can stand
23 up, whatever you like. Whatever makes you comfortable.

24 MS. LOPEZ: So I'd like to just address my motion for
25 TRO, if I may, your Honor.

J1APLOPC

1 THE COURT: Okay. Just before you start, though,
2 recognize that it's out of my hands. It's out of this.

3 MS. LOPEZ: That's understandable. So I'm pretty --
4 my question is directed at U.S. magistrate, but also just for
5 procedural clarity. I'm pretty certain that because I alleged
6 issues of fact within the motion, that I'm entitled to a
7 hearing of some type to argue orally my motion. I'm also
8 pretty sure, from my lose glancing at Judge Caproni's
9 instructions, that most serious matters -- I consider a request
10 for a TRO pretty serious -- go in front of her. That's why the
11 motion is pending in front of her.

12 I don't believe it would be fair or adequate for this
13 Court to decide the motion without hearing facts first. So I'm
14 sure it would please Judge Caproni, as well as the pro se
15 office, to try to streamline what would be the next few days of
16 me running in and out of court, trying to figure what I would
17 have to do to either trigger a hearing or to file an appeal
18 with the Second Circuit for the denial of a hearing, at least I
19 would get a writ of mandamus.

20 So I think it would be unfair, I'm going to say again,
21 for either the magistrate or Judge Caproni to rule on the
22 motion without giving plaintiff, especially a pro se plaintiff,
23 who is alleging in the motion some change in circumstance
24 substantially, to not be afforded a motion to prove or
25 disapprove any of the elements or facts asserted in the motion.

J1APLOPC

1 And I -- sure. I was going to respond to Ms. Quinn.

2 THE COURT: And, you know, understand, too, a report
3 and recommendation is just that. So I have not ruled on the
4 motion at all. That's just my recommendation. Judge Caproni
5 may accept it. She may not accept it. But if you want the
6 ruling from Judge Caproni on whether you get oral argument,
7 whether you get a hearing, whether you want her to adopt the
8 recommendation or not, that is -- the procedural basis to do
9 that is by filing an objection before Judge Caproni.

10 Now, the time for that has passed. You had two weeks.
11 So, you know, so that procedural process is out of here now,
12 and you really should reach out to Judge Caproni, again via the
13 pro se office and via your next filing, how you want to address
14 that.

15 MS. LOPEZ: So the only reason the TRO was necessary
16 is because this Court is still mulling over a motion for
17 preliminary injunctive relief that was removed from the State
18 Court.

19 So before I address Ms. Quinn's counsel, any issues
20 she brought up in the status conference, I do want to state, as
21 a homeless person that is disabled, that I find it wholly
22 unacceptable for this Court to take the amount of time it has
23 taken to decide the motion. Being given the opportunity to
24 have all these months being desperate and homeless, it occurred
25 to me that your Honor or Judge Caproni isn't potentially

J1APLOPC

1 viewing the issue of having a home the same way it views other
2 civil matters involving poor or indigent pro se litigants.

3 So I would like to put on the record, and to address
4 this Court, that I believe that this Court should view the
5 deprivation of basic human fundamental rights, such as housing,
6 akin to the deprivation of freedom. So this Court, which
7 normally has a snail's pace in deciding the very complex issues
8 in front of it, knows when issues of incarceration or
9 potentially the health of an unconscious person is at stake, if
10 no one is going to move quick for those issues, I'd like to, as
11 a pro se individual that is disabled, that has been dependent
12 on the government and the courts court my entire life for
13 either sustenance or relief, I'd like to scold this Court for
14 even taking the amount of time it has taken to decide that
15 motion. That motion was made in the utter desperation of
16 street homelessness.

17 I'm going to get to Ms. Quinn. In this instance,
18 there was some stuff -- since your Honor brought it up -- I'd
19 like to put on the record, since I'll be running around in this
20 furlough or this government shutdown in the next couple of
21 days, having to navigate the Second Circuit. Mr. Roberts has
22 made statements to other attorneys that my appearance, my
23 physical appearance, doesn't make it look like I'm in such a
24 desperate situation. He said to an attorney, Susan Russell,
25 when contacted recently, well, she appears to look okay.

J1APLOPC

1 So getting back to my original principle and me
2 potentially filing a writ of mandamus with the Second Circuit
3 Court of Appeals simply regarding the lack of a decision on the
4 preliminary injunction, I think when this Court fails indigent
5 people, homeless people, people that are unconscious, that have
6 other people making decisions medically or otherwise for them,
7 it does a disservice to the overall justice system.

8 And I think that this Court should, for the precedent
9 of it, consider someone being homeless an absolute emergency,
10 and if there's anything about my appearance, your Honor, that
11 suggests that I am not as desperate as a homeless person that
12 may come in here with holes in their clothes or looking
13 haphazard, I think that is a matter of prejudice that doesn't
14 take into account that the assertions that I've made from the
15 very beginning is that I've learned to do sex work to survive,
16 and a part of doing sex work to survive is maintaining your
17 appearance.

18 Now, addressing Ms. Quinn, or excuse me, her counsel,
19 WIN's counsel, and the time that has elapsed without me
20 making any objection to their motion, I want to say on the
21 record, even if this Court doesn't accept my opposition, that
22 from reading Ms. Quinn's counsel's papers, their argument
23 really doesn't make any sense because I make the minimal legal
24 allegations against Ms. Quinn and WIN West to support
25 litigation.

J1APLOPC

1 I assert that they failed to make reasonable
2 accommodation as an issue of fact, what is reasonable or what
3 my accommodations must be. And I'd also say that Ms. Quinn's
4 comments to me on the phone violated multiple local, state and
5 federal statutes either regarding people with disabilities or
6 transgender people. So -- and, your Honor, I'd like to
7 actually hand this letter up now for the Court.

8 Consistent with my being in treatment, since I only
9 got to this provider in November, November 13th, I have been
10 experiencing some of the most severe posttraumatic stress
11 disorder symptoms of my life. I've said this before, but
12 things can get worse sometimes despite my outward appearance.
13 And so I'd be requesting an extension of time to respond to
14 Ms. Quinn's counsel's motion to dismiss. Yes, has a
15 considerable amount of time elapsed since the deadline? Yes,
16 it has. However, my mental health and medical history, as well
17 as social sort of history maintained by the municipal
18 defendants have proven that I have been homeless for at least a
19 year, like literally. So just in asking for more time to
20 respond --

21 THE COURT: Okay. Ms. Lopez, time out. Time out.
22 Have you --

23 MS. LOPEZ: Yes.

24 THE COURT: -- provided --

25 MS. LOPEZ: Yes.

J1APLOPC

1 THE COURT: -- this letter --

2 MS. LOPEZ: Yes.

3 THE COURT: -- the letter from the Center -- before
4 saying "yes," let me finish my question.

5 Have you provided this to defense counsel? What do
6 you propose to use this letter for?

7 MS. LOPEZ: So I handed it up today just because I
8 believe it is procedurally appropriate. If I hand any piece of
9 document or material to opposing counsel for the case, you're
10 asking me why. I handed it to the Court today just for good
11 measure. What my intention of using it for, is that really
12 your --

13 THE COURT: Well, because --

14 MS. LOPEZ: Do you want to ask me that like that?

15 THE COURT: -- usually -- and I have not read this
16 letter and I'm not going to read it right now because here's
17 what I'm saying. Usually, when you proceed in litigation in
18 any court, there are rules and there are procedures to follow.
19 They can seem very hard to follow, and a lot of times they
20 don't make sense and they can seem very frustrating, especially
21 somebody who is doing it without a lawyer.

22 That said, those are rules that I, as a judge, am
23 obligated to follow. I was talking to my daughter about this
24 recently but, you know, it's like, on the one hand, as an
25 activist, if you're an activist or you're trying to advocate

J1APLOPC

1 for something else, as an advocate, you know, you may advocate
2 the rules should be changed or rules should not be followed in
3 this particular instance. However, as the Court, I cannot do
4 that.

5 So I hear your frustration with the process. I hear
6 your frustration with how long things are taking. I am going
7 to try to move things along as quickly as I can. That being
8 said, when there are multiple motions or cases being filed and
9 different things being filed, and I can't tell the reason why
10 they're being filed; meaning, does it relate to the motion to
11 dismiss against the WIN and Christine Quinn defendants? Does
12 it relate to some discovery issue with the other defendants?
13 Does this relate to your objections on the report and
14 recommendations? Does this relate to the motion to dismiss?
15 Or relate to your injunction? Or all of the above or some of
16 the above?

17 All of that, actually, gums up the wheels of justice
18 because we need to figure out, and we need to make sure that we
19 look at everything that you present when it comes time to
20 decide a particular motion. As to that, the issue that
21 usually, and most of the time, when a litigant files something
22 in court, it's filed on the docket, and it's given to the other
23 side so that they have an opportunity to respond to it and
24 consider it.

25 When you give something to the Court ex parte, which

J1APLOPC

1 means you don't show it to the other side, there are other
2 issues that get involved.

3 MS. LOPEZ: They have it.

4 THE COURT: They have it?

5 MS. LOPEZ: If this was the whole thing you were going
6 on about, I might have spoken too soon, your Honor, but I was
7 trying to save you that. They have it.

8 THE COURT: Okay. They have it, okay. But at the
9 same time, is it something that you want filed on the docket?

10 MS. LOPEZ: Your Honor, I am pretty smart. I have a
11 Mensa-level IQ. I do know what I handed up, and if you would
12 have allowed me to finish, what I was going to say was....

13 THE COURT: Go ahead.

14 MS. LOPEZ: Speaking about gumming up the wheels of
15 justice, municipal defendants counsel and I had a conversation
16 as of five last night. And I don't want to skip over it
17 because I was on something when I handed it up. I might have
18 handed it out of order, but that letter is in furtherance of
19 resolving the case, to support my claims. It serves multiple
20 functions.

21 I was handing it up because I felt that it, at this
22 point, inappropriate that all of defense counsel had it and the
23 Court did not have it. And it is literally just written and
24 signed as of five-something yesterday; so it is brand new. It
25 is germane to this conference because moving the case forward

J1APLOPC

1 would and can potentially involve a settlement, a complex
2 settlement.

3 There are also arguments to be made in asking this
4 Court to use its discretion in moving things along on the
5 defendants' side related to even their own argument, your
6 Honor. Their own assertions are based on their nonexistent
7 expertise in the mental health and medical needs of transgender
8 people. The entire basis of argument or arguments that have
9 been made on the behalf of all defendants but specifically
10 Project Renewal and the municipal defendants, have been the
11 mental health, mental health, mental health.

12 So just going back to what I know your Honor wants to
13 focus on where we've been in between and what the parties have
14 done to try to settle the case, I actually have notes here,
15 your Honor, to keep me on track. So again, just, I was going
16 to ask this Court or ask this Court to consider extending
17 time -- I will put it in writing -- to respond to Ms. Quinn's
18 motion, if the Court needs. I know they do not have to accept
19 my oral arguments at this time as to my opposing her motion,
20 but again, I'll put on the record that --

21 THE COURT: Consider this oral argument, go for it.

22 MS. LOPEZ: Then, it is my position that I factually
23 stated in both the original complaint and the complaint removed
24 by the municipal defendants, I factually stated enough to
25 sustain litigation against both Christine Quinn and WIN West,

J1APLOPC

1 and I would also like to say, your Honor, that, speaking of
2 transcripts, in one of the very first, if not the first
3 appearances before Judge Caproni, because I had been in
4 Marsha's Place at Project Renewal before we got to court; so
5 there was a period of time I was already there, the municipal
6 defendants and DHS begin mentioning WIN West as a potential for
7 me to be transferred out of Marsha's for a whole month and a
8 half, your Honor, before Judge Caproni lifted the TRO.

9 Because of that, it is my argument that they
10 participated in the official retaliation that came from
11 succeeding in the original TRO, and it will only be in
12 discovery, when I'm able to get the e-mails and communications
13 between the Department of Homeless Services, WIN officials and
14 potentially Christine Quinn herself, where I will be able to
15 demonstrate factually that not only are they liable for failing
16 to make reasonable accommodations and all those sort of bland
17 and generic claims, but that they also participated
18 mechanically, if you will, in the actual transfer and planning
19 process to get me out of Marsha's.

20 And also, again, this is where I get to tell all the
21 cisgender, non-transgender people in the room what offends me.
22 I'll leave it off with the allegations that I made against
23 Chris Quinn about her statements to me being offensive, aren't
24 you a woman? Didn't you get a surgery for that? I'm the only
25 one that gets to determine what is offensive or not under

J1APLOPC

1 state, federal -- state and local law. And because of that,
2 I'd ask this Court to dismiss Christine Quinn's motion to
3 dismiss or rule against --

4 THE COURT: Deny the motion.

5 MS. LOPEZ: Deny the motion. Excuse me.

6 I'm actually looking at my notes because I'd like to
7 keep on pace. Okay.

8 THE COURT: Are you shifting gears from the motion to
9 dismiss?

10 MS. LOPEZ: I was going to announce that in one
11 second. Yes. I'm going to now direct where we have been in
12 terms of trying to reach a settlement between me and the
13 municipal defendants.

14 THE COURT: I would like to just get back, just wind
15 up some things on the motion to dismiss.

16 MS. LOPEZ: Yes, your Honor.

17 THE COURT: I'm going to take a close look at the
18 transcript when it's prepared so that I can issue a report and
19 recommendation on the motion to dismiss as soon as I can.
20 However, I also wanted to give you an opportunity to -- if you
21 would like, I think I can extend the deadline for you to file
22 something written.

23 MS. LOPEZ: Yes, your Honor.

24 THE COURT: If you'd like to file something written to
25 supplement that. I want to make sure that we at least take

J1APLOPC

1 care of that before you move on to another issue.

2 MS. LOPEZ: Are we setting a deadline or at the end?

3 THE COURT: Well, no, no, right now. So on the motion
4 to dismiss, I'm going to construe this as your oral argument,
5 and I'm going to have to review the transcript very carefully
6 because you have said a lot and it's a lot to consider.

7 MS. LOPEZ: Sure.

8 THE COURT: If you would like to file a written
9 response, opposition to your motion to dismiss -- opposition to
10 WIN and Christine Quinn's motion to dismiss, how much time do
11 you need to do that?

12 MS. LOPEZ: A month, please, your Honor.

13 THE COURT: A month. Okay. So a month puts us at
14 February 10th, which is a Sunday; so I'm going to give you the
15 following week, February 15th.

16 MS. LOPEZ: Thank you, your Honor.

17 THE COURT: So, please, file -- any written opposition
18 is due February 15th, and if you would like your -- if you
19 believe that this letter from the Center is relevant and should
20 be considered, it still needs to be formally filed. So I would
21 suggest that you file it with your opposition papers. However,
22 having taken a quick look at it, it may have information that
23 you don't want publicly available to everybody.

24 MS. LOPEZ: I've thought about that.

25 THE COURT: So if you file a request for sealing or

J1APLOPC

1 redactions, that should take care of it. Okay?

2 MS. LOPEZ: Yes, your Honor.

3 THE COURT: All right. And then for the WIN and
4 Christine Quinn defendants, how much time would you need for
5 reply?

6 MS. GRANT: Your Honor, we would request a month; so
7 March 15th.

8 THE COURT: Okay. March 15th happens to also be a
9 Friday; so let's reply due March 15th.

10 The other thing I'm going to do, because Ms. Lopez has
11 communicated to us the urgency of her claims, is that if
12 Ms. Lopez files her opposition before February 15th, you will
13 have considered your date moved to four weeks from the date of
14 her filing.

15 MS. GRANT: Understood, your Honor.

16 THE COURT: Okay. So March 15th or four weeks from
17 filing of opposition, whichever comes first. All right. Yes?

18 MS. GRANT: One last thing. Just because Ms. Lopez
19 had made an oral argument on the record, I think we requested
20 oral argument on our motion; so when it's fully briefed, rather
21 than get into an oral argument on it today.

22 THE COURT: Right.

23 MS. GRANT: Since there hasn't been opposition papers
24 filed, we would just like to continue our request to have oral
25 argument.

J1APLOPC

1 THE COURT: Okay. All right. Please, also consider
2 that if, after reviewing Ms. Lopez's opposition -- again, you
3 know, we're trying to get to quicker decisions on some of these
4 things. Do reconsider, after you've had a chance to review the
5 transcript and review Ms. Lopez's opposition, whether you
6 really need to.

7 MS. GRANT: I will consider that.

8 THE COURT: And I'm not saying that in a bad way, but
9 I'm just saying, like in a way of moving it forward, are there
10 issues that you had not anticipated or could not respond to
11 adequately in your reply. You're, of course, permitted to make
12 that request and continue that request. However, if you think
13 that you can handle it by addressing Ms. Lopez's arguments that
14 she's raised now and in opposition, if you think that you can
15 adequately respond to them in writing, that would be probably
16 the quickest way to move this motion forward.

17 MS. GRANT: Understood, your Honor. I just didn't
18 want to waive any opportunity.

19 THE COURT: You're not waiving any right. I am not
20 going to construe waiver of anybody's rights today. Okay? I
21 think you can see that here.

22 MS. GRANT: Absolutely. And, of course, we would like
23 to -- I think we probably are well-skilled at responding in a
24 reply brief to any opposition arguments that Ms. Lopez has
25 made.

J1APLOPC

1 THE COURT: Right. The more concise they there, the
2 easier it is for me to get to a written report and
3 recommendation, which then still needs to go to Judge Caproni
4 with requisite objections on both sides. So it's not -- I
5 mean, we'll do the best we can, Ms. Lopez, but there is timing
6 built in that just is -- it is what it is.

7 Okay. You were going to move on to...

8 MS. LOPEZ: And I just want to state on the record
9 right now that I would like nothing more but for this
10 litigation to be done. So plaintiff has moved with all due
11 diligence and reasonable speed to both communicate with the
12 municipal defendants and put forth what I deem to be a really
13 fair settlement demand or set of demands.

14 Here's what I'd like the Court to address, please.
15 I'd like to bring some complaints, maybe casually, maybe
16 formally, against the municipal defendants and counsel for the
17 municipal defendants. Now, I have read up on how Court and
18 opposing counsel, and I don't have to state this factually I
19 just want to reiterate.

20 Opposing counsel is the government. This is not a
21 situation where a pro se litigant is opposing a private
22 corporation or an entity that has obtained or acquired private
23 counsel. Mr. Roberts is the government, and he should know how
24 to act accordingly when dealing with pro se litigants. He has
25 effectively done two things that I think this Court should

J1APLOPC

1 address in terms of moving settlement or this case forward, and
2 I find them alarming.

3 He has, essentially, to me it looked like on purpose,
4 failed to relay one of the elements of a settlement demand I
5 made, the most important, to his client, wasting, your Honor,
6 three months. So I spoke to Mr. Roberts -- maybe I'm
7 exaggerating, maybe it's two and a half. I approached or
8 called Mr. Roberts, had a conversation with Mr. Roberts and put
9 forth a settlement stipulation, demand of a certain monetary
10 amount and certain other factors.

11 Weeks went by. When I finally spoke to Mr. Roberts,
12 after reading the municipal defendants' response to my oral
13 request and what I thought was Mr. Roberts relaying my
14 settlement demands, he literally said: Oh, you were serious
15 about the money? Oh, I didn't tell my clients. Let me go back
16 to my clients. And then, your Honor, he never responds at all
17 in writing.

18 Now, I'm going to get to the second sort of complaint,
19 which may sort of underscore what his response will be for why
20 he doesn't speak to me -- oh, she's difficult -- but, your
21 Honor, you don't have to speak to me to send me a response.
22 And it is ethically and legally inappropriate for him,
23 representing the government, for him -- they could laugh off my
24 demands.

25 I put forth a hundred thousand dollars for my pain and

J1APLOPC

1 suffering and a number of other things, just so your Honor
2 knows. I asked for \$100,000, or to start there, for a
3 city-wide education campaign about service animals, especially
4 in buildings or places frequented by poor people or homeless
5 people, and lifetime veterinary care for my dog.

6 His response was almost as if he didn't hear what I
7 said and, your Honor, they're allowed -- opposing counsel is
8 allowed to act like they didn't hear me, but by Mr. Roberts'
9 own admission: Oh, I didn't tell my clients that; I didn't
10 think you were serious. Admitting that he had heard my demands
11 or stipulation and that was months and months and months ago.

12 And to top all that off, your Honor, Mr. Roberts has
13 demonstrated to me that he won't take my calls, but he'll take
14 the calls of lawyers associated with me. So I'm going to
15 address something your Honor just brought up about stuff being
16 on the record and not on the record. I don't want to sound
17 like I'm tap dancing around something, but there is an issue of
18 a criminal nature out of Kings County, where I was the victim
19 and Mr. Roberts --

20 THE COURT: Does that relate to the subpoenas that you
21 had issued?

22 MS. LOPEZ: Yes, your Honor. And Mr. Roberts was
23 contacted by a senior assistant district attorney in human
24 trafficking. He took her calls, your Honor, had a nice long
25 conversation with her about my case, and even admitted sort of

J1APLOPC

1 registering a recommendation from that same ADA that I was
2 potentially in danger and for a recommendation, whether
3 registering it as fact, but this assistant district attorney
4 said to him that I shouldn't be housed in a dorm, which is an
5 element of this case, potentially moving a settlement forward,
6 the point is he will speak to attorneys and not me.

7 If this Court is so inclined to help the municipal
8 defendants and a settlement to become fruitful, maybe I'll make
9 another oral argument here in front of you this morning, your
10 Honor. Pro se plaintiff requests counsel to be assigned
11 because I'm indigent and poor and the government won't
12 communicate with me in good faith. Perhaps in the interest of
13 justice and moving everything along, maybe this Court would
14 appointment an attorney. And if this Court is not willing to
15 do so, I ask this Court to please admonish the government for
16 not openly communicating with the plaintiff.

17 If Mr. Roberts says to me: Mariah, we'll not take
18 your calls, only e-mail me, I will e-mail him. And I'm
19 wrapping it up. Based on our last oral conversation, your
20 Honor, before yesterday, I was waiting for a response to him
21 bringing his client my stipulation of a cash settlement that
22 was over two months ago. And, again, just to bring it all
23 home, he has spoken to multiple attorneys or people that called
24 him on my behalf. He just won't answer my calls.

25 THE COURT: Okay. There's a lot in there. So I'm

J1APLOPC

1 going to try to unpack it.

2 MS. LOPEZ: I know.

3 THE COURT: That's going to take some time too. As to
4 the attorney appointment, you did previously have a pro bono
5 attorney, or did you not? Never?

6 MS. LOPEZ: No. At first, Judge Caproni asked an
7 attorney to stand up on the very first oral argument to my
8 motion for a TRO on April 27th, my birthday, two years ago.

9 THE COURT: Okay. And then what happened?

10 MS. LOPEZ: The Court was no longer inclined to either
11 appoint an attorney or to ask one to stand up with me. And I
12 actually have to say on the record that I think that has mucked
13 things up. It would have moved this case along with more
14 diligent speed had this Court --

15 THE COURT: I agree. I agree, but I'm going to take a
16 look at the docket because I thought that there was -- I don't
17 know if that was a limited appointment or if it was --

18 MS. LOPEZ: It was limited.

19 THE COURT: -- or if the attorney had withdrawn.

20 (Pause)

21 Okay. So all right. So it looks like, right, that
22 the limited appearance was for the initial hearing. So
23 there's, I guess, a couple of things we could do, and one is
24 whether you would be seeking pro bono representation for the
25 rest of the case, you know, for all purposes, or for the

J1APLOPC

1 limited purpose of settlement.

2 It will be easier to get a lawyer for the limited
3 purpose of settlement discussions, but I think, in either case,
4 if you get a pro bono attorney representative who can work with
5 you and, you know, that might also help move things along. I
6 am not familiar right now with the resources available or the
7 ability to find pro bono counsel, particularly on short notice,
8 because it's just there's a huge press for that. And I'm not
9 saying we'll -- After this conference is adjourned, we'll take
10 a look and we may issue an order, or I might make some phone
11 calls and try to see what the landscape is.

12 MS. LOPEZ: Just to put on the record --

13 THE COURT: Yes.

14 MS. LOPEZ: -- I have made every attempt to identify
15 pro bono counsel. There are two attorneys, they both practice
16 in this court, that have been willing to take up settlement
17 talks. I want to be very clear that I am fully lucid about
18 what is happening, and it would be easier for all the parties
19 to settle. Right? That's probably the case in all litigation.

20 Anthony Cecutti and Rose Weber are both able to
21 practice here and familiar to the court. However, they are
22 both -- they have been, because they are practicing litigating
23 attorneys, on trial. Mr. Cecutti has indicated -- I will say
24 on the record, and Mr. Roberts or if anybody else is taking his
25 phone number, it's 917-741-1837.

J1APLOPC

1 Mr. Cecutti has a unique familiarity with my mental
2 health history and my just personal history, and he's in good
3 standing with the city and this court. What he said to me was
4 he wasn't familiar enough with ADA-type cases, that he wasn't
5 comfortable jumping in. That was two months ago. But he did
6 indicate he was interested if I could get a second-chair
7 attorney that was simply familiar with the procedure or loss
8 surrounding the type of claims that I was making, Anthony would
9 be happy to be the face of the settlement and to move me
10 forward.

11 THE COURT: Okay.

12 MS. LOPEZ: I just want to mention, in the interest of
13 justice and moving it along. In the same vein of Mr. Roberts,
14 the government, municipal defendants being contacted by
15 attorneys at the Kings County District Attorneys Office about
16 settlement, your Honor -- again, the whole reason I'm here,
17 trying to reach a settlement -- the Speaker's office for the
18 City Council has already reached out to the City Law
19 Department, and specifically advocated for a settlement at
20 least regarding a private single room housing situation, your
21 Honor.

22 So there are multiple other governmental arms that are
23 encouraging or pressuring the municipal defendants to settle,
24 at least again, about the basic, fundamental right of a safe
25 place to live with four walls. And it appears that just for

J1APLOPC

1 some odd reason, the municipal defendants are resistant to the
2 constant recommendations of other wings of the New York City
3 government. All right.

4 THE COURT: Okay. I also wasn't -- I mean, I haven't
5 heard -- you know, obviously, I haven't heard from the
6 municipal defendants about settlement discussions, and I do
7 think that whether -- I think it was better, obviously, if
8 Ms. Lopez was able to get pro bono counsel at least for
9 settlement discussions or up to having settlement discussions,
10 you know, to have a settlement conference to see where we can
11 get things.

12 But separate and apart from that, I'm just going to go
13 on about my -- you know, sort of the way that I think about
14 pro se cases, and how they should be litigated. And I say this
15 to, you know, counsel representing private entities, who are
16 acting as defendants in pro se cases, is I believe, and I hold
17 very firmly in this courtroom and in the litigation as a whole,
18 that litigants are to treat each other with respect, and that
19 that involves and includes -- a basic level of respect includes
20 understanding your adversary and understanding what types of
21 remarks and ways of dealing with somebody are likely to push
22 you backwards as opposed to forwards.

23 I'm not necessarily saying that anybody on defense
24 side has done anything actionable, although Ms. Lopez might
25 disagree, but I'm not saying that. But what I'm saying is that

J1APLOPC

1 I think we all have seen from the litigation of this case that
2 Ms. Lopez would probably not appreciate things said as --
3 perhaps said as a joke or would not appreciate not feeling
4 taken seriously. I think that's a very common thread in many
5 pro se cases and cases involving pro se litigants.

6 And, you know, one of the fundamental rights I think
7 we have in Federal Court is that everybody does have a right to
8 be heard, and part of that, the way I interpret it, is that not
9 only do you have to give them the right to be heard, every
10 litigant a right to be heard, but they need to feel heard and
11 especially if we're thinking about settling a case.

12 That said, I'm wondering if it might make sense for us
13 to set a date. I don't think it's appropriate right now,
14 particularly on the record, on the record and the transcript
15 that defendants are paying for to get too heavily about who
16 said what about what aspects of settlement. Again, Ms. Lopez,
17 I think it would be better if there could be counsel for you
18 to --

19 MS. LOPEZ: I agree.

20 THE COURT: -- to try to work out some of these
21 things. I will say, though, that settlements are voluntary.
22 They involve both sides being willing to come and speak
23 candidly, but also willing to consider certain things about
24 their positions and really consider candidly whether certain --
25 you know, some things are non-negotiable, right?

J1APLOPC

1 Like, I understand that one of the things that you
2 consider completely non-negotiable is the nature of your
3 housing situation, but then other things might be more
4 negotiable. And that is, before we have a productive
5 settlement conference, whether you have counsel or not, you
6 know, some of that assessment needs to be done before we get in
7 because, otherwise, it will degenerate into somebody saying,
8 look, this is completely unreasonable.

9 If I am managing a settlement conference, I do not
10 have the power to order anybody to really do anything, as a
11 judge. I can make recommendations. We can talk about certain
12 aspects of potential settlements, certain components, but
13 that's not like -- I can't make anybody do anything, right?

14 MS. LOPEZ: That's right.

15 THE COURT: And another factor to consider with that
16 is also when you're dealing with municipal defendants, and I
17 say this in civil rights cases all the time, that, you know,
18 the attorneys that you face are the face of the defendants, but
19 there are layers and layers and layers of other people who
20 are -- who may constrain and direct the people who you're
21 seeing in ways that, you know, they have limited control over.

22 MS. LOPEZ: May I?

23 THE COURT: Yes.

24 MS. LOPEZ: And I'm going to stand for this for the
25 reason you actually brought up a really good point, your Honor.

J1APLOPC

1 I actually can, it's been argued actually I was just in front
2 of another federal judge weeks ago, who noted the uniqueness of
3 my legal history and background with the City of New York. And
4 I'd like to address the practice and procedure of how the city
5 settles the cases based on firsthand experience.

6 And now, I will sort of just, ad nauseam, go on about
7 the three landmark cases that I have under my belt. And the
8 reason I bring them up, your Honor, is because all of those
9 cases have involved very intimate settlement back and forth
10 with the City of New York, and I was lucky enough to have the
11 types of lawyers, like Karen Friedman, who runs Lawyers for
12 Children; Lou Sartori, who now heads pro bono for Legal Aid,
13 and others as my personal attorney in those cases.

14 And because I am familiar, your Honor, with the
15 settlement process of the city, I'd like to point out the
16 anomaly or the anomalous nature in which this case is being
17 settled. So when I sued ACS, your Honor, or when I sued
18 Department of Corrections, it is never the actual agents
19 themselves that are involved in the controversies that decide
20 the settlement. A lot of the controversy, or many of the
21 controversies at the cent of this case stem from actions taken,
22 if I can, you know, sort of be figurative, at Beaver Street
23 last year, at Maiden Lane, and many of those same exact either
24 DHS bureaucrats or attorneys for the city, air quotes -- and
25 like your Honor says, Mr. Roberts is only a face -- those

J1APLOPC

1 attorneys are -- let me put this right.

2 Mr. Roberts has indicated to me that certain staff
3 that are not attorneys are no longer with Department of
4 Homeless Services, as a way to sort of solicit me back. Oh,
5 you should just come back to the shelter. Let us re-evaluate
6 your needs, he sort of says, to paraphrase. Don't worry, the
7 doctor is no longer there. But when I asked him who it is he
8 is passing on my settlement requests to, your Honor, this is
9 what struck me, he said DHS.

10 Now, what that means to me, isn't Corp. Counsel, isn't
11 city lawyers. It says to me that people like Paul Hargrow or
12 even Project Renewal-connected DHS administrators are making a
13 decision about the outcome of this case. And, your Honor, some
14 of the elements that I allege, some of the assertions I make
15 have criminal liability to them. I cannot imagine it ethical
16 or reasonable, especially to the members of City Council who
17 sort of serve as a check for the City Law Department are
18 concerned, none of their staff agree, that the same
19 administrators that are involved in the controversy are an
20 extension of opposing counsel or helping to decide elements --
21 I mean, it's just wholly inappropriate.

22 And then, your Honor, I'll sit down. But then he got
23 snippy. I don't think it's inappropriate when I said to him:
24 Well, when you say you're passing along my marks or there's
25 other people deciding, do you mean the same group of people

J1APLOPC

1 that decided last year? And when I hand you these tidbits of
2 change in circumstances or my life, or even -- I will hand this
3 to the Court eventually -- proof of not only my civil claims or
4 evidence of making those claims out, but potential criminal
5 acts, Mr. Roberts and an insulated group of individuals at the
6 City Law Department, are seeming to keep this case and the
7 outcome under wraps.

8 I find that highly irregular, and I will go back to
9 what I opened with, this Court and the municipal defendants is
10 talking about someone that has been written about in the
11 New York Law Journal and other journals multiple times. I am
12 very familiar with not only litigating but the process of
13 settlement. I will point out the most, what I think, important
14 settlement of all the landmark cases, and two of them I won
15 outright, was Joel A. v. Giuliani.

16 And without that settlement, your Honor, none of the
17 beds that exist today for foster youths that are queer would
18 exist. That settlement was a federal settlement. It only
19 happened -- I'm pointing this out because, your Honor, the city
20 didn't have to settle in that case, but there were parallels in
21 both the circumstances, the city failing to provide enough beds
22 for a certain population, your Honor. In this instance, in
23 Joel A., the city ACS failed entirely to recognize gay kids as
24 a population, and so didn't have enough beds.

25 The Marisol settlement, your Honor, there was a case

J1APLOPC

1 called -- I'm sure you're familiar with Marisol -- prohibited
2 the class from going forward, but the City Law Department,
3 realizing, oh, shucks, we do have a problem here, there are
4 kids being abused and there is a need, they came to the table
5 and negotiated, your Honor, in good faith a full two years
6 before the settlement would have allowed the class of
7 plaintiffs to move forward. So that was in 1999, and I was 14
8 years old.

9 I'm almost 34. So I'm very familiar with the
10 settlement process, and my only hope of droning on was that
11 this Court be completely familiar with not only my position in
12 the circumstance, but be in a position to guide these
13 proceedings forward without wasting anymore time. I do think
14 it's irregular how the city has been negotiating a settlement
15 in this case, and I'd ask this Court to potentially look into
16 it.

17 THE COURT: And for the documents that you just
18 indicated that you were going to hand up --

19 MS. LOPEZ: They have already.

20 THE COURT: Okay. It's much more efficient to file
21 them.

22 MS. LOPEZ: File them. Yes, your Honor. Yes, your
23 Honor.

24 THE COURT: Because I don't even let my staff --

25 MS. LOPEZ: Yes, your Honor.

J1APLOPC

1 THE COURT: -- like give me original documents
2 because --

3 MS. LOPEZ: Yes, your Honor.

4 THE COURT: -- because I might lose them --

5 MS. LOPEZ: Yes, your Honor.

6 THE COURT: -- and that's too important.

7 MS. LOPEZ: Yes, your Honor.

8 THE COURT: Okay? So it's much better if they're
9 filed.

10 MS. LOPEZ: Yes, your Honor.

11 THE COURT: If I lose my copies, I know where I can
12 get another one.

13 MS. LOPEZ: Yes, your Honor.

14 THE COURT: All right? All right. So we should
15 probably set -- Okay. So from the defendants, from the
16 municipal defendants, those of you in the front row, I guess,
17 or related municipal.

18 MR. ROBERTS: I'm here only for the municipal
19 defendants.

20 THE COURT: Okay. Are there any motions pending, or
21 is Ms. Lopez's case against your group, against your clients,
22 where are we with that now? I mean, are we sort of supposed to
23 be in discovery or --

24 MR. ROBERTS: Discovery has not yet begun. As
25 Ms. Lopez said, there was a preliminary injunction motion that

J1APLOPC

1 was fully briefed. That's been before Judge Caproni now since
2 the middle of last year. Then there was this renewed emergency
3 motion for TRO that you've made your report and recommendation.
4 So there are sort of essentially two preliminary injunction
5 issues before Judge Caproni.

6 We have never had -- because of -- we, the defendants
7 sitting at the table here, have filed answers to the second
8 amended -- what was deemed, I think it was deemed the second
9 amended complaint was the complaint that had been filed in
10 state court and then removed. We filed answers. The counsel
11 for WIN and Ms. Quinn, in the back row, have made a motion to
12 dismiss.

13 THE COURT: Right.

14 MR. ROBERTS: As I understand the normal procedure,
15 when the motion to dismiss is done, then we'll have a
16 preliminary conference and set a discovery schedule. That has
17 not yet happened.

18 THE COURT: We can set a schedule as to your
19 defendants, though, because you've answered, right? And then
20 the other issue is whether there should be discovery -- whether
21 discovery should proceed as to the WIN and Quinn defendants.
22 But let's, for those of you sitting in the front row, right
23 now, discovery could proceed, right?

24 MS. LOPEZ: Yes.

25 MR. ROBERTS: If your Honor orders a discovery

J1APLOPC

1 schedule, discovery -- if it were not for the motion to
2 dismiss, I assume we would have had a preliminary conference
3 and a discovery schedule would have gone forward.

4 THE COURT: Let's treat this as a preliminary,
5 preliminary conference because normally when we have a
6 preliminary conference, you know, the parties have conferred
7 and filed their 26F report. So what I'm going to do here is
8 I'm going to do something a little bit differently. So for the
9 defendants who have answered, I'd like you to -- I have to look
10 up my own individual practices and see what the timing is here.

11 MS. LOPEZ: Your Honor, I was going to make a motion
12 for expedited discovery under rule 26 anyway. I was waiting
13 for him to bring it up; so I'm going to now make an oral
14 argument to expedited discovery considering --

15 THE COURT: We're going to --

16 MS. LOPEZ: Just putting it on the record.

17 THE COURT: You don't even need to make your motion
18 because we're going to quickly.

19 MS. LOPEZ: I just wanted to put it on the record.

20 THE COURT: We're going to move you as quickly as
21 possible.

22 MS. LOPEZ: Okay.

23 THE COURT: Okay? Let's see. Okay. So what we'll do
24 is we'll have another sort of case management status
25 conference. We'll set that date as soon as we can.

J1APLOPC

1 I'm looking that in my individual practices, I allow
2 the parties to submit separate case reports and proposed case
3 management plans. However, I'm going to let you decide. I'm
4 going to ask you to think about this. In normally represented
5 cases, the parties' lawyers are to meet and confer and prepare
6 a joint 26F, you know, have a 26F conference and prepare a
7 joint report.

8 Since you've been already talking, had some settlement
9 discussions already, I'm going to ask both of you -- and only
10 if both of you say yes will I have you do this -- is do you
11 think it would be helpful to crystalize the issues to at least
12 try to work on a joint 26F report, or do you think it would be
13 better to prepare separate reports?

14 My concern is -- and you'll see each other's separate
15 reports before the conference. It's just that I'm wondering if
16 it might make sense for you all, since you have some history
17 already, to talk to each other, and if you can't reach
18 agreement on some of the language that needs to go in each
19 section of the joint 26F report, then you break it out into,
20 you know, plaintiff says X, defendant's position is Y, which
21 I've also seen happen.

22 It might be a little bit easier when we have our
23 status conference than to have two completely different reports
24 that have been drafted without at least you all having some
25 conversations with each other.

J1APLOPC

1 MS. LOPEZ: I'm okay with that, and I'll just say on
2 the record that I would -- I'm optimistically awaiting the
3 Court's decision as to whether or not to appoint counsel for
4 settlement talks. So if that were to occur, all of this talk
5 of me engaging in 26F discovery report matters would be moot
6 and non-existent, but I am not opposed to it and I'm willing to
7 work with it.

8 THE COURT: I'm going to do my best to see what
9 resources there are to try to find you pro bono counsel. I
10 can't --

11 MS. LOPEZ: I understand.

12 THE COURT: I'm new on the bench; so I'm not so
13 familiar with what I can and can't do.

14 MS. LOPEZ: I think they prefer --

15 THE COURT: And just sit here and be like, if I could,
16 I would make one magically appear for you because I think it
17 would be the best for everybody in this case. I'm just not
18 sure what I can do.

19 MS. LOPEZ: That's fine.

20 THE COURT: I'm going to have to, after this
21 conference, do a little research on my own to see how we can
22 move this case forward.

23 As to defense counsel, what are your thoughts on
24 trying to prepare a joint report?

25 MR. ROBERTS: That's fine, your Honor. I suspect

J1APLOPC

1 we'll wind up with separate sections in one letter.

2 THE COURT: Yes, that's also fine because at least
3 you'll have talked, and you'll know what the other side's
4 issues are.

5 All right. So that joint, hopefully and
6 optimistically, 26F report is due one week before the next
7 status conference. We're going to set a date for the status
8 conference right now. So let's look at the first week of
9 February, which is the soonest I have availability. Okay. So
10 we can do February 6th in the afternoon or February 7th in the
11 morning.

12 MS. LOPEZ: Either is fine for the plaintiff, your
13 Honor.

14 THE COURT: Okay.

15 MR. PISCHL: I'd prefer the 6th, if that's okay.

16 THE COURT: Does the 6th work for all defendants? All
17 right. So Wednesday, February 6th at 2:00 p.m.

18 MS. GRANT: Sorry, your Honor. I just want to
19 clarify. Is this just for the --

20 THE COURT: This is just the initial case management
21 conference. For the WIN and Quinn defendants, you're welcome
22 to attend, if you want to, but I don't think we're going to be
23 making any rulings or dealing with any of those issues.

24 MS. GRANT: So the defendants who have answered, and
25 otherwise for the WIN defendants, discovery will be stayed

J1APLOPC

1 until our motion is decided?

2 THE COURT: I'm not going necessarily going to let --
3 discovery is not automatically stayed. There is a lot of paper
4 to get through. I need to take another look at the motions and
5 things like that. In the first instance, however, as of right
6 now, you're not required to attend on February 6th. I may take
7 a look at, while I'm doing my looking into, you know, whether I
8 can find Ms. Lopez some pro bono counsel for purposes of
9 settlement, whether we want to think we want to move to a
10 settlement, whether it might make sense to have somebody from
11 the WIN and Quinn defendants attend anyway. But if that
12 happens, we'll issue an order as soon as we can. Okay? I aim
13 to try to get that moving sooner rather than later.

14 MS. LOPEZ: A couple of things about WIN and
15 discovery --

16 MR. ROBERTS: Your Honor --

17 THE COURT: No. You started talking first, you talk.

18 MS. LOPEZ: Because Mr. Roberts, or it's my factual
19 assertion that the municipal defendants mentioned WIN as a
20 potential transfer option during the first ever oral argument,
21 I would like to ask that as soon as I file my written
22 opposition to WIN's motion to dismiss and they have responded,
23 I'd like the Court to consider extending discovery to WIN
24 because it would be impossible for me to make my -- or to go
25 forward without having discovery, since they were a part of

J1APLOPC

1 sort of the conversation in open court.

2 And also, it's my assertion that Christine Quinn and
3 DHS administrators were working with Mr. Roberts and DSS
4 administrators at least a month before I was transferred; so
5 I'd like access -- I'd like discovery to extend to WIN once the
6 formality of my paperwork is in and they've formally responded.

7 THE COURT: Okay. Sometimes what we do is because
8 they filed a motion to dismiss, and there's at least a
9 possibility that they could get dismissed completely from the
10 action, so usually, you know we don't necessarily want to
11 impose a heavy discovery burden on them if it turns out they're
12 going to be out. That's the argument that they would make to
13 say this is why discovery should be made.

14 I hear you loud and clear about the conversations. So
15 sometimes what is done, and we may consider it this way, is to
16 consider whether you might be able to get that same information
17 from the defendants who have already answered.

18 MS. LOPEZ: Yes, your Honor.

19 THE COURT: And then that way -- or at least the
20 beginnings of that and then, you know, we can assess the next
21 step.

22 MS. LOPEZ: I understand and recognize clearly that I
23 won't be able to get Christine Quinn's phone records from any
24 of the other defendants, and because some of my allegations
25 pertain to communications between both of us and even who

J1APLOPC

1 initiated which call, I'd eventually be asking for Christine
2 Quinn's work cell phone records.

3 THE COURT: Okay. But these are conversations that
4 you had with Ms. Quinn?

5 MS. LOPEZ: Yes, on her direct cell phone to my direct
6 cell phone.

7 THE COURT: Okay. And nobody else was present or
8 anything else?

9 MS. LOPEZ: There were people present when I spoke
10 with her at certain points. There were multiple conversations,
11 your Honor, at least three.

12 THE COURT: Okay. But you have your own phone
13 records, right?

14 MS. LOPEZ: Yes.

15 THE COURT: So as for whether Ms. Quinn initiated the
16 call or you did --

17 MS. LOPEZ: I can prove that.

18 THE COURT: Right. So, right? And then you were on
19 the conversation with Ms. Quinn? So you can make sworn
20 statements about -- you would be a witness to those
21 conversations.

22 MS. LOPEZ: That would only pertain to my allegations
23 about harassment and not retaliation and mechanizations that I
24 had been working with DHS for a whole month before that
25 conversation.

J1APLOPC

1 THE COURT: Right, but DHS, those are some of the
2 defendants?

3 MS. LOPEZ: If I'm able to ascertain who Ms. Quinn was
4 in contact with or if, I will file this, or communicate that
5 discovery request.

6 THE COURT: Yes, some of that may be -- some of that
7 may be --

8 MS. LOPEZ: Available.

9 THE COURT: -- obtainable from the defendants who have
10 already answered.

11 MS. LOPEZ: Gotcha.

12 THE COURT: The purpose here is just if you can get
13 it -- if you have different ways, let's get it the quickest way
14 and the easiest way first. And then --

15 MS. LOPEZ: Yes, your Honor.

16 THE COURT: -- if it's not enough, then we will look
17 at other options.

18 MS. LOPEZ: Yes, your Honor.

19 THE COURT: Just try to get to it as simply and as
20 quickly as we can.

21 MS. LOPEZ: Yes, your Honor.

22 MR. ROBERTS: Your Honor, if I can be heard?

23 THE COURT: Yes.

24 MR. ROBERTS: I just want to alert Ms. Lopez that one
25 of the initial discovery portions that we're going to want is a

J1APLOPC

1 list of all of her medical treatment treaters and HIPAA
2 releases because her medical condition is a central issue in
3 the case.

4 THE COURT: Okay.

5 MR. ROBERTS: And I just want to alert her of that
6 because we, at times, particularly with pro se's, have had
7 difficulty at times in obtaining HIPAA releases.

8 MS. LOPEZ: I will address that by saying, No. 1 -- so
9 he brought it up. I really don't mean to go on forever, but my
10 entire medical history is not any of his business. What he
11 needs, he has.

12 It is not my position as a trans advocate, but even as
13 a pro se litigant, that the Department of Homeless Services
14 would need the entirety of someone's medical background.
15 Indeed, the ADA doesn't even require it for them to make sort
16 of reasonable accommodations. So I'm just going to put on the
17 record there is zero resistance in transparency.

18 The entirety or the magnitude of my entire medical
19 history is irrelevant to him. I want to also put on the record
20 that one of the original medical recommendations as for my
21 needing a single room came from the surgeon that performed my
22 sex change operation, and he has since retired.

23 He has a letter from that -- the municipal defendants
24 have a letter signed by Dr. Harold Reed indicating my need to
25 dilate. The medical -- the letter that I handed up today gives

J1APLOPC

1 them all other information and refers to that treatment, and
2 really, I just don't want to have to go back and forth with
3 this.

4 Mr. Roberts, if there is anything else you are going
5 to be requesting, because it is so sensitive and your Honor
6 already pointed out the sensitivity, I ask that you make that
7 request here open, or at least avail to it here in open court
8 so I can potentially object to it here, now, and we don't have
9 to waste anymore time.

10 THE COURT: That's what you'll talk about first when
11 you're preparing your 26F report.

12 MS. LOPEZ: Got it. Okay. Yes, your Honor.

13 THE COURT: And then we'll talk about it again at the
14 next status conference, but this also highlights -- you're
15 making the exact same argument that the WIN and Quinn
16 defendants might make about discovery of them. Right? You're
17 saying, well, you already have a lot of this stuff. You might
18 not need everything --

19 MS. LOPEZ: Okay.

20 THE COURT: -- or you may already have, for example,
21 some of the dilation evidence. You have -- you know you might
22 be able to get from somebody who's currently practicing, rather
23 than having to go to the surgeon who's now retired.

24 Those are all the kinds of conversations that you will
25 be having. You know, but one aspect of that is that the

J1APLOPC

1 clearest way, because and I'm not -- even in represented
2 litigation, is to get certain HIPAA releases that would be sent
3 to particular doctors or medical facilities and the like. And
4 it would be up to the parties, if they can agree, and to the
5 Court if you can't, to see whether limits should be placed on
6 that.

7 However, in the first instance, it's a release so you
8 can get the entirety of the files from that particular provider
9 so that there's a full picture, there isn't something withheld
10 as to the treatment for that particular issue or with that
11 particular doctor. And all of that will be under a very strict
12 confidentiality -- in this case, there will be a
13 confidentiality and protective order in place so that none of
14 that will be disclosed to the public. Okay? This is strictly
15 for use in this litigation.

16 MS. LOPEZ: Yes, your Honor.

17 THE COURT: Okay?

18 MS. LOPEZ: Yes, your Honor.

19 THE COURT: Anything else right now?

20 MR. GREENBERG: No, your Honor.

21 THE COURT: Okay.

22 MS. LOPEZ: I'm wondering if the shutdown could
23 potentially affect the Second Circuit and if this Court has any
24 directive procedurally, as to the public, as to what --

25 THE COURT: We're dealing the best we can. The courts

J1APLOPC

1 are deemed essential.

2 MS. LOPEZ: Okay.

3 THE COURT: Are deemed essential; so we will be open.
4 In what capacity we'll be open after January 18th remains to be
5 seen. It's actually a pretty terrible situation because many,
6 many, many of the people who work in this courthouse live
7 paycheck to paycheck. It is -- you know, being required to
8 work without pay because we're deemed essential also means that
9 people can't go out and find other work that can bring in cash
10 to pay the bills.

11 MS. LOPEZ: I'm quite familiar with the gap economy.

12 THE COURT: This is what we are laboring under. The
13 situation changes day-to-day. The judiciary runs out of money
14 on the 18th. It's my understanding that the court security
15 officers and the marshals are already working without pay and
16 that there are probably other people in this courthouse who are
17 already working without pay.

18 MS. LOPEZ: Isn't that awful.

19 THE COURT: And so we should all be mindful that,
20 right now, the service aspect of public service and government
21 service is very strong in this courthouse. Okay?

22 MS. LOPEZ: Thank you.

23 THE COURT: But we'll do the best we can. I plan to
24 be here and working, whether it's with pay or without pay.
25 I'll be here. My staff will be here. We'll do the best we

J1APLOPC

1 can.

2 MS. LOPEZ: Thank you, your Honor.

3 THE COURT: Yes, there's going to be -- adjustments
4 are being made day-to-day.

5 MS. LOPEZ: Sure. Thank you.

6 THE COURT: Thank you for acknowledging that.

7 MS. LOPEZ: I'll check the website from day-to-day.

8 THE COURT: Yes, I think that's the best place for
9 information.

10 MS. LOPEZ: Last procedural thing?

11 THE COURT: Yes.

12 MS. LOPEZ: May I request an order allowing me to
13 bring one electronic device when I attend status conferences?

14 THE COURT: Yes. For scheduling purposes, we'll --

15 MS. LOPEZ: Thank you. So how do I let them know?

16 THE COURT: Mr. Light will print out the order for
17 you.

18 MS. LOPEZ: Thank you, your Honor.

19 THE COURT: And you can complete it. Okay?

20 All right. Anything else? Oh, and I guess there's
21 the issue of the subpoenas. Is that something we can deal with
22 at the status conference?

23 MS. LOPEZ: It might come up in the middle, and I was
24 going to try to not bring it up, but I certainly will be
25 exercising my subpoena power. Just to be clear why I'm doing

J1APLOPC

1 it, I'm not just wielding it. I believe the documents that I
2 have requested are germane to my argument about irreparable
3 harm, and I'll just state here openly on the record.

4 The argument that Mr. Roberts and the city is going to
5 make against not providing some of the information from the
6 criminal wing of New York City government is nonsensical
7 because it involves information that, by design, is public
8 because it will be used in a bail argument against a person.

9 So essentially, I have asked them to turn over
10 information relating to the criminal history of another person,
11 or to provide an officer that can attest to that. They want to
12 keep his name specifically private, that's their business.
13 However, his criminal record, by design, your Honor, we have,
14 as a society, function with rap sheets because there are lots
15 of people that have access to criminal history.

16 And the municipal defendants couldn't stand up and
17 oppose a subpoena on grounds that the information is
18 confidential because, by design, the ADA I'm subpoenaing would
19 have to say under oath that she will be making a bail argument
20 within hours of this person's arrest, publicly stating this
21 information to try to maintain his incarceration.

22 So the issue of subpoenas will come up. I really
23 would rather not have to fight with them, but it is my hope --
24 Mr. Roberts is aware of the generality of the information I'm
25 trying to get. I wanted to lay it in front of him. Hopefully,

J1APLOPC

1 the municipal defendants and I will reach a settlement that
2 would make that moot, but if we don't, I am totally entitled,
3 under the law, to try to demonstrate irreparable harm. If
4 there is an individual that poses that danger or another
5 government agency that holds that information, I'm entitled to
6 it for these proceedings.

7 THE COURT: I hear you. This should be something that
8 you should speak to Mr. Roberts about. Generally --

9 MR. ROBERTS: Your Honor --

10 THE COURT: -- speaking --

11 MR. ROBERTS: If I could be heard for just a moment?

12 THE COURT: Okay. I was going to say that, generally
13 speaking, subpoenas like this are premature, but go ahead,
14 Mr. Roberts.

15 MR. ROBERTS: I have advised Ms. Lopez that I do not
16 represent the Brooklyn DA. The Brooklyn DA receives the
17 subpoena. The Brooklyn DA will do whatever the Brooklyn DA
18 does.

19 THE COURT: It's their job to respond.

20 MR. ROBERTS: I don't represent them. If the Police
21 Department is subpoenaed, whatever they do, they generally
22 handle subpoenas served on them. If they come to me, I'll do
23 something. But I am not taking any position with regard to
24 these subpoenas other than they haven't been properly served.
25 They are now moot because they were for --

J1APLOPC

MS. LOPEZ: Absolutely.

MR. ROBERTS: -- right today before Judge Caproni.

They've never been served. I don't think you need to rule on them, but if they're properly served, they will be addressed by who ever has them.

MS. LOPEZ: I didn't serve them because of our subsequent conversation, and you're right. But I do find it curious, since you brought it up, that the one that you cited to send to the magistrate wasn't the subpoena directed at Alana, who was an agent of your agency. You chose to point out to the Court in your on-paper tantrum.

THE COURT: I got both of them.

MS. LOPEZ: Well --

THE COURT: I got a copy of them.

MS. LOPEZ: Linda Weinman. The one I saw was a copy of the subpoena sent to an ADA in Brooklyn. He seems far more concerned with that one, and that's the only --

THE COURT: I have five.

MS. LOPEZ: The only one I saw in an e-mail that came up when I pulled it up, or at least the header, and I apologize and I retract that, your Honor.

THE COURT: It was five.

MS. LOPEZ: Five was the number that I --

THE COURT: I have all five.

MS. LOPEZ: Thank you, your Honor.

J1APLOPC

1 THE COURT: All right. Anything else?

2 MR. ROBERTS: No, your Honor.

3 THE COURT: Okay. This matter is adjourned. We'll
4 see you in February, in two weeks. Thank you very much, and as
5 I said at the beginning, defendants to order the transcript.
6 Share the costs, provide a copy to Ms. Lopez. Thank you.

7 (Adjourned)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25